

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05A-UI-08065-BT
OC: 06/26/05 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Minnesota Mining & Manufacturing Company (employer) appealed an unemployment insurance decision dated July 25, 2005, reference 01, which held that Jenny Mason (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2005. The claimant participated in the hearing. The employer participated through Sandy Bodine, Human Resources Manager; Dennis McDaniel, Team Leader; and Craig Adams, Team Advisor. Employer's Exhibits One through Five were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time operator from November 4, 2002 through June 21, 2005. She had problems completing her timecards accurately which resulted in numerous disciplinary warnings. On May 3, 2004, the claimant did not complete and update her timecard even though she had been reminded three times. On May 14, 2004, she was instructed to fill out her timecard before she left but she failed to do so. She violated the call-in policy on May 16, 2005 by not talking to her team leader even though she was aware that was required. The employer suspended the claimant on June 9, 2004 and she was given a formal performance correction plan. Subsequent to that, the claimant received another warning for not filling out her timecard on September 26, 2004 and again did not complete her timecard on May 15, 2005. A written warning was issued to the claimant on May 20, 2005 for her failure to accurately complete her timecards and for low production. She was given an additional verbal warning after that.

The employer was given a tip on May 27, 2005 that the claimant had not recorded on her timecard that she was late that morning. This information was accurate so the employer began a thorough investigation by comparing the claimant's written timecard hours to her badge history. The badge history is obtained by reviewing the physical access manager reports, which is a record of the actual times the claimant entered and exited the building. This information was then compared to the claimant's production reports. When the employer discovered numerous discrepancies in the month of May 2005, the employer opted to also pull the reports for March and April 2005. The employer found discrepancies on 26 days from March 7, 2005 to May 31, 2005.

The claimant worked less hours than reported, worked more hours than reported, and worked different hours than reported. Several times, she placed vacation hours on the calendar but not on her timecard. The claimant was paid for hours which she did not work. The employer concluded its investigation near June 14, 2005 and the claimant was placed on suspension while the information was sent to the corporate office. The corporate office approved the claimant's termination and the claimant was discharged on June 21, 2005.

The claimant filed a claim for unemployment insurance benefits effective June 26, 2005 and has received benefits after the separation from employment in the amount of \$2,216.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

his definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for repeated policy violations with regard to time reporting and time theft. The employer conducted a thorough investigation comparing three different sources of information to determine the claimant's actual time versus her recorded time. The claimant admitted her time records did not reflect the time she actually worked. She testified that she was adjusting her time because of a class she was taking and that she had her supervisor's authorization. However, the supervisor denied this allegation and it seems extremely unlikely that her supervisor would have approved such excessive violations, particularly since the claimant had been repeatedly warned about it. The claimant's violation of known work rules was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated July 25, 2005, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,216.00.

sdb/pjs